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ELECTIONS

Testimony
Senate Committee on Rules and Administration
“Voting By Mail: An Examination of State and Local Experiences”
Honorable Susan A. Davis
May 5, 2010

Chairman Schumer, Senator Roberts:

It's an honor to be here before you with Senator Wyden – a true leader on mail ballot issues – to testify about the rising use of absentee voting and improving the process.

My interest in bettering our elections goes back to my service as President of the San Diego League of Women Voters. I was active in League because there is no greater good one can do for our democracy than ensure all Americans have their voices heard and have a fair chance to participate in elections.

Our Constitution is clear in providing Congress with the authority to set some basic ground rules for Federal elections, and this power has often been used to extend the franchise. Throughout our nation's history, the federal government has opened the doors to those shut out of the voting process intentionally or unintentionally – whether they be women, racial minorities, members of the military, Americans living overseas, 18 to 21 year-olds, or voters with disabilities. Each time those doors open wider our country has been the better for it.

But our work is not complete. The next step is to give hard-working Americans with busy lives the best chance to vote no matter what comes up on Election Day.

I vote at the polls whenever I can because I just like to. Many Americans feel the same and I am not proposing to take that option away. But we shouldn't consider a person any less patriotic for wanting to do his or her civic duty at the kitchen table.

The reality today is that ever-increasing numbers of voters are choosing to vote by mail because people pursuing the American Dream are getting up early, commuting long distances in more traffic, and they savor the precious time they have to spend with their families.

Many people who vote by mail want to participate in democracy but are uncertain whether they'll make it to the polls between their work duties, family obligations, and

unexpected Election Day occurrences like a sick child, a long day at the office, or an early November snowstorm.

Certain states don't even have requirements that employers give workers an hour or two on Election Day to go to the polls. And while some states do protect this right for employees, one to two hours can easily be mitigated by long lines or a long drive to the polling station.

Further, ballots are growing longer and longer these days, and they're often filled with complex initiatives that voters want to take their time and study before deciding how to vote. Some voters simply don't like to feel rushed at the polls, and no voter should have to choose between getting back to work on time and filling out their ballot completely.

Some have speculated that absentee voters will cast their votes before campaigns are over and will regret their votes. I can tell you, campaigns these days start pretty early, and we know that some voters do make their minds up well before campaigns are over. But it's essential to remember that absentee voters have the choice and flexibility to turn a ballot in right away or wait to hear everything the campaigns have to say. No one is forcing them to cast their ballot too early, and in many places they can even drop it off at a polling place on Election Day.

Others have suggested that early in-person voting is an adequate substitute for voting by mail. While I fully support this opportunity, I disagree that it's a viable alternative to absentee voting. Like Election Day, early voting still involves waiting in line, limited hours, and few locations. Early in-person voting can also be highly burdensome for elections officials, who have difficulty securing early voting sites and staffing, and must provide hundreds of different ballot types at each location where paper ballots are used.

Voting by mail simply has a broader reach.

And Americans trust our Postal Service to carry out our most important of transactions, from handling our financial documents to seeing our ballot through to elections officials. In fact, the Pew Research Center found again this year that the Postal Service has higher favorability (83%) than any other federal agency in their survey.

That trust is why voters in my state of California and the twenty-eight other states with "no-excuse" absentee voting are increasingly voting by mail. In the 2008 general election, over 40% of California voters cast their ballots by mail. In 2004, that number was 32%, and in 2000 only 24%.

I took the right to vote absentee for granted until 2004, when a nurse from Ohio told me she could not vote for President because the polls there were only open from 7:00 AM to 7:00 PM, hours that overlapped with her commute and shift.

She called her elections office in advance to request an absentee ballot but was told her work was not a valid reason to vote absentee.

Since she would not abandon her patients, she did not vote.

Fortunately, Ohio has since changed its laws to allow no-excuse absentee voting, but twenty-one states still have not.

Hearing the nurse's story compelled me to take action.

The fact that some twenty-one states still require excuses to vote by mail is a problem on three levels.

First, voters in "excuse states" simply do not have as great an opportunity to vote as their counterparts in "no-excuse states" – this creates an unequal playing field when we're all voting for the same President and the same Congress.

Second, the excuse requirements are arbitrary impediments and they do not increase security.

For example, in Michigan, you can vote absentee if you're over 60, in Mississippi, you have to be over 65 and in Georgia you have to be over 75.

In Delaware, you even need to collect and pay for a notary signature to affirm that you'll be on vacation or are a student unable to vote in person.

In Tennessee, sick voters need a note directly from their doctor to the county election commission stating that they are medically unable to vote in person. And that's in addition to the letter a voter must write directly to the commission.

Even work doesn't count as a valid excuse in many states—and in some only certain work does. For example, in Alabama you can only get an absentee ballot if you work at least a ten hour shift. Unfortunately, your commute doesn't count.

And no state has a special exemption for parents of young children. I support parents who set an example for their kids by taking them the polls when possible, but any parent knows it's not always practical to stand in a long line with toddlers and then try to concentrate on a long ballot.

The third reason absentee excuses are a problem is that they violate our privacy for no good reason. Some people say a voter's privacy is at risk voting from home. There's not much evidence of that, and many people talk politics with their family anyhow. What is clear is the threat to privacy states pose when they request unnecessary information from individuals just to obtain a ballot.

For example, in Virginia you must state where you will be vacationing to get an absentee ballot. If you have a religious obligation, you have to explain that. If you are sick, you must list the nature of your disability or illness. If you are caring for someone else, you

have to list their illness. And, most surprisingly, if you are pregnant you must disclose that to the state.

All of this information becomes part of the public record. And elections officials tell me it is never verified. But if you forget to fill out any part of the request – “Sorry you can’t vote.”

The good news is we can fix all of these problems by passing the Universal Right to Vote by Mail Act.

As a former state and local elected official, I have great respect for the role of states and am always concerned about how federal law will affect local government. The great thing about this bill is that it merely expands a process every state already has. In fact, the bill would allow elections offices to *reduce* layers of bureaucracy and save money they spend having staff check for excuses and track supporting documentation.

Apart from that, the Congressional Budget Office indicates the bill would have no impact on the Federal budget and is not an unfunded mandate on the states because it regards basic Constitutional rights, namely the right to vote.

I want to emphasize that, like the Help America Vote Act, this measure clearly falls under Congress’ authority under Article 1, Section 4, of the U.S. Constitution to make laws governing the place, time and manner of Federal elections.

In 1974, a Fulbright professor and his wife travelling overseas were denied an absentee ballot by their state and told by a state court that they had no right to an absentee ballot under state law. The decision of *Prigmore v. Renfro* made it clear that Congress would have to pass such a law for them to have that right.

Vote by mail is what the American people want. A recent study by the Election Assistance Commission showed that 65% of Americans think all voters should have the option to cast an absentee ballot.

But if Congress does not act, millions of Americans will remain without the right to an absentee ballot. States have had decades to do this. Even some local elections officials, like the Michigan Association of County Clerks, have grown so frustrated by unsuccessful state-based efforts they are turning to Congress for a national no-excuse absentee law.

Since Kansas started no-excuse absentee voting in 1967, more than half the states and the District of Columbia have followed suit and no one has switched back. The case for a federal measure establishing the right to vote absentee is even stronger today than it would have been in the past. Whereas no-excuse absentee voting is now the law in half the country, the other half has been left with fewer options and less flexibility in casting their ballots for Congress and the Presidency.

Before I close, I also want to urge the committee to consider one more bill – HR 2510, the Absentee Ballot Track, Receive, and Confirm (TRAC) Act, a bill we recently passed in the House and is awaiting action here in the Senate. I introduced this bill along with my colleague, Congressman Kevin McCarthy. This bill is modeled on a successful law in California and would expand on the tracking language in the MOVE bill. It would provide state grants to set up absentee ballot tracking systems so voters can know whether their absentee ballot has been sent, received by the elections office, and has been counted.

I want to take this opportunity to express my deep gratitude to those groups and individuals supporting the Universal Right to Vote by Mail Act and the TRAC Act, many of whom have entered letters into the record here today.

I strongly believe this Congress must expand and improve absentee voting for all eligible voters, and extend a bedrock promise of our democracy – a vote for every citizen. Thank you Mr. Chairman for holding this important hearing, to the other panelists who will speak here today, and the staff that helped this happen.